

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-207139

DATE: September 29, 1982

MATTER OF: William M. Gualtieri - Restoration of
Forfeited Annual Leave

DIGEST:

An employee of the Office of Personnel Management (OPM), on approved leave for the remainder of the 1981 leave year, forfeited 4 hours of annual leave as a result of the President granting 4 hours of administrative leave on December 24, 1981. The employee's annual leave account exceeded the maximum carryover of 240 hours. The failure of OPM to counsel employee of holding in Joseph A. Seymour, B-182549, August 22, 1975, does not constitute administrative error. No authority exists for restoration of such forfeited annual leave under 5 U.S.C. § 6304(d)(1)(A) based upon administrative error by the agency since OPM does not have a regulation which requires that its employees be counseled concerning possible forfeiture.

Mr. William M. Gualtieri, an employee of the Office of Personnel Management (OPM), has appealed Settlement Certificate Z-2837506, dated March 16, 1982, issued by our Claims Group, which denied his claim for restoration of 4 hours of annual leave that he forfeited during the 1981 leave year.

The issue on appeal is whether the failure of an agency to advise its employees how to schedule the use of their annual leave to take into account the possibility that the President would decree that employees on approved leave would not be charged leave for the last half of the workday on

December 24, 1981, Christmas Eve, constituted administrative error. For the reasons that follow, the forfeited annual leave may not be restored.

The facts are as follows. Mr. Gualtieri requested and was approved to use annual leave in the "use or lose" category during the period December 21, 1981, through January 8, 1982. However, in his memorandum to heads of Federal agencies, the President of the United States encouraged agency heads to excuse employees for the last half of the workday on December 24, 1981, Christmas Eve. The President's memorandum stated that "Employees who are on approved leave should not be charged leave for this period." Mr. Gualtieri was granted 4 hours administrative leave on December 24, 1981, which caused his annual leave to exceed the maximum carryover of 30 days (240 hours) allowed by section 6304(a), title 5, United States Code, by 4 hours. The 4 hours of annual leave in excess of the maximum allowable accumulation was forfeited by Mr. Gualtieri and the agency determined that the forfeiture was not caused by an exigency of the public business.

The Claims Group concluded that there is no authority under 5 U.S.C. § 6304 (1976) to restore the 4 hours of forfeited annual leave and cited our decision Joseph A. Seymour, B-182549, August 22, 1975. In Seymour, we stated that where an employee takes annual leave for the remainder of the leave year (13 days) but is charged for only 11 days because 2 additional holidays were declared by Executive order during that period, there is no authority to restore 6 hours of annual leave that was forfeited in excess of the statutory limit of 240 hours. In his appeal, however, Mr. Gualtieri contends that CPI made an administrative error when, in advising its employees how to schedule annual leave to avoid forfeiture, it did not also make mention that in view of our decision in Seymour, employees should schedule their time to take into account the possibility of the President declaring an unscheduled holiday. He states that providing this advice is an obligation which falls squarely on the shoulders of

management as part of its time and attendance function. He concludes that if the failure by OPM to advise its employees is viewed as an administrative error, then the forfeited leave may be restored under the "administrative error" provision of the law for restoration of annual leave.

Under section 6304(d)(1)(A), title 5, United States Code, 1976, annual leave which has been forfeited may be restored if the forfeiture resulted from an administrative error when the error causes a loss of annual leave otherwise accruable. What constitutes an administrative error under the cited statutory provision in a particular case is a matter for which primary jurisdiction lies with the agency involved. John J. Lynch, 55 Comp. Gen. 784 (1976). The OPM has not made a determination under the quoted statute as to whether Mr. Gualtieri's annual leave was forfeited due to an administrative error. However, the decisions of this Office have construed an administrative error as the failure of an agency to carry out written administrative regulations having mandatory effect for the purpose of correcting erroneous pay rates, etc. We have also held that, when counseling an employee is required by administrative regulations, such as in cases concerning retirement, failure to give correct advice on such matters as the employee's service credits constitutes an administrative error. Lynch, supra, and cases cited therein.

The evidence of record in this case does not disclose that OPM has a regulation which requires that its employees be counseled concerning possible forfeiture of annual leave under the circumstances of Mr. Gualtieri's situation. See Samuel Bernstein, B-187055, March 4, 1977. Consequently, there is no basis for a finding of an administrative error.

Accordingly, Mr. Gualtieri does not qualify for the restoration of annual leave forfeited at the end of the 1981 leave year under the provisions of 5 U.S.C. § 6304(d)(1)(A), based upon an administrative error by OPM.

John J. Lynch
Comptroller General
of the United States